

Department of Justice

§ 42.715

applies. This prohibition applies to actions taken by a recipient, directly or through contractual or other arrangements, that have the purpose or effect of discriminating on the basis of age.

(b) This prohibition encompasses treatment of elderly persons, children and any other age group. Unless one of the exception applies, the recipient may use neither a minimum age limit nor a maximum age limit in connection with receipt of benefits or services or other participation in a program or activity subject to this subpart.

§ 42.711 Exception; authorized by law.

(a) This subpart does not apply to an age distinction contained in a portion of a federal or state statute or a local statute or ordinance adopted by an elected, general-purpose legislative body which portion:

(1) Provides any benefits or assistance to persons on the basis of age;

(2) Establishes criteria for participation in age-related terms; or

(3) Describes intended beneficiaries or target groups in age-related terms.

(b) The exception set forth in paragraph (a) of this section does not extend to regulations adopted by an administrative agency pursuant to a specific statutory provision or otherwise.

§ 42.712 Exception; normal operation or statutory objective.

(a) A recipient may take an action that would otherwise be prohibited by § 42.710(a), if such action reasonably takes age into account as a factor necessary to the normal operation of or the achievement of any statutory objective of the program or activity.

(1) *Normal operation* refers to the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(2) A *statutory objective* of a program or activity is a purpose that is expressly stated in a federal or state statute or a local statute or ordinance adopted by an elected, general-purpose body.

(b) This exception applies when the following test is met—

(1) Age is used as a measure or approximation of one or more other characteristics;

(2) The other characteristic must be measured or approximated in order to continue the normal operation of the program or activity or to achieve any statutory objective of the program;

(3) The other characteristic can be reasonably measured or approximated by the use of age; and

(4) The other characteristic is impractical to measure directly on an individual basis.

(c) The question whether an age distinction comes within this section depends upon the particular facts, including the nature and purpose of the program or activity, the basis for and the nature and purpose of the age distinction, and the manner in which the age distinction is used.

§ 42.713 Exception; reasonable factors other than age.

(a) A recipient may take an action, otherwise prohibited by § 42.710(a), that affects age groups differently, if such differentiation is based upon reasonable factors other than age.

(b) This exception does not apply to the use of an explicit age distinction, but to conduct that has the effect of differentiating among age groups. This exception applies when the factor (other than age) upon which the recipient's action is based bears a direct and substantial relationship to the normal operation of or achievement of a statutory objective of the program or activity.

§ 42.714 Special benefits.

If a recipient operating a program or activity provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of § 42.712.

§ 42.715 Burden of proof regarding exceptions.

The burden of proving that an age distinction or other action falls within the exceptions described in § 42.712 and § 42.713 is on the recipient. This allocation of the burden of proof applies in proceedings by the Department to enforce the Act.